International Seabed Authority

ISBA/21/LTC/3

Legal and Technical Commission

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Procedures and criteria for the extension of an approved plan of work for exploration pursuant to section 1, paragraph 9, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

Note by the Secretariat

I. Introduction

1. During its meetings in 2014, the Legal and Technical Commission noted that seven exploration contracts were due to come to an end between March 2016 and March 2017,[1] involving the following contractors: Interoceanmetal Joint Organization, Yuzhmorgeologiya, the Government of the Republic of Korea, China Ocean Mineral Resources Research and Development Association, Deep Ocean Resources Development Co. Ltd., Institut français de recherche pour l'exploitation de la mer and the Government of India. Based on initial discussions with contractors, it could be anticipated that several of the existing contractors may seek an extension of their respective contracts.

2. The Commission had also noted that section 3.2 of the standard clauses for exploration contracts requires that applications for extensions of plans of work for exploration be submitted not later than six months before the expiration of the plan of work. This means that the first such applications for extension could be anticipated as early as September 2015, for consideration during the twenty-second session of the International Seabed Authority in 2016. Accordingly, it is necessary during the twenty-first session to formulate appropriate procedures and criteria to ensure that the provisions of section 3.2 are applied in a uniform and non-discriminatory manner.

[1] A list of the contractors, their sponsoring States and the dates upon which their contracts will expire is contained in the annex to the present document.

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3. Subsequently, in its decision ISBA/20/C/31, the Council of the International Seabed Authority requested that the Commission, as a matter of urgency and as its first priority, formulate draft procedures and criteria for applications for extensions of contracts for exploration, to be submitted to the Council at its 2015 session (ISBA/20/C/31, para. 2).

4. In response to the Council's request, the Secretariat of the International Seabed Authority has prepared draft procedures and criteria for the extension of an approved plan of work for exploration for consideration by the Commission at its session in February 2015 (ISBA/21/LTC/WP.1). The draft has been formulated bearing in mind the need to address the procedural and substantive problems highlighted in section II of the present document. It elaborates on the form, content and timing of the submission of applications, the prescribed fee and related administrative processes. It also sets out the procedures and criteria for the processing of applications by the Secretariat and consideration of applications by the Commission and the Council. The draft also contains a transitional provision and two annexes. To assist further in clarifying each of the provisions of the draft, a conference room paper annotating the draft procedures and criteria will be made available to the Commission in due course.

II. Analysis of the legal provisions relating to extension of plans of work for exploration

5. Section 1, paragraph 9, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 states that a plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Such extensions, for periods of not more than five years, shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

6. The provisions of section 1, paragraph 9, of the annex to the Agreement, as quoted above, have been incorporated into the text of the Authority's Regulations on prospecting and exploration in the Area.[2] Furthermore, section 3.2 of the standard clauses for exploration contracts, contained in annex IV to each set of Regulations, provides that, not later than six months before the expiration of a contract, a contractor may apply for extensions of the contract for periods of not more than five years each. Such extensions shall be approved if the contractor has made efforts in good faith to comply with the requirements of the plan of work but, for reasons beyond the contractor's control, has been unable to complete the necessary

[2] See regulation 26 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area; regulation 28 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area; and regulation 28 of the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area.

preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

7. A number of problems of a procedural and substantive nature may arise with regard to the implementation of section 3.2. Substantively, section 3.2 provides two separate grounds upon which an extension may be approved. Those are:

(a) That the contractor has made efforts in good faith to comply with the requirements of the contract but, for reasons beyond the contractor's control, has been unable to complete the necessary preparatory work for proceeding to the exploitation stage;

(b) That the prevailing economic circumstances do not justify proceeding to the exploitation stage.

8. Both of those grounds are subjective and imprecise tests. It is not clear, for example, whether "prevailing economic circumstances" refers to global market conditions or to the economic feasibility of the contractor's particular project, which may perhaps be demonstrated by a pre-feasibility study. In the latter case, if after 15 years a particular contractor's project is not viable for reasons that are unconnected to global economic conditions; it seems difficult to understand how an extension for a further five years could be justified. It is also not clear what data and information must be submitted by the contractor to support an application for an extension. A specific question that arises is whether the contractor is required to submit a proposed programme of activities covering the extension period, and the relationship between that programme of activities and the original plan of work for exploration. If the ground for extension is that the contractor has been unable to complete the necessary preparatory work for proceeding to the exploitation stage, it would seem logical that the programme of activities during the extension period should focus on completing that preparatory work in order to proceed to exploitation. The programme of activities should also be sufficiently detailed to enable the Commission and the Council to carry out their functions of supervising activities in the Area. Furthermore, it is not clear whether an extended contract period may entail additional training and related obligations, although it may perhaps be inferred that all standard clauses of the contract continue to apply throughout the extension period.

9. There are also procedural difficulties with section 3.2. Although it does provide that an application for an extension shall be submitted not later than six months before the expiration of a contract, and shall be approved by the Council on the recommendation of the Commission, it does not specify any minimum period of notice for consideration by the Commission, for example, 30 days, as in the case of applications for approval of plans of work for exploration. Nor is there any stipulation as to processing fees, the form of applications, the procedure for consideration by the Commission, including the order in which applications shall be considered, and the form of certification by sponsoring States.

10. The draft prepared by the Secretariat has attempted to clarify the issues identified above.

III. Recommendation

11. The Commission is invited to review the draft procedures and criteria for the extension of an approved plan of work for exploration contained in document ISBA/21/LTC/WP.1 at its session in February 2015 and to formulate an appropriate recommendation to the Council for its consideration in July 2015.

Annex

List of contracts for exploration expiring between March 2016 and March 2017

Contractor	*Date of entry into force*	*Sponsoring State or States*	*General location of exploration area*	*Date of expiry*
Interoceanmetal Joint Organization	29 March 2001	Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia	Clarion-Clipperton Fracture Zone	28 March 2016
Yuzhmorgeologiya	29 March 2001	Russian Federation	Clarion-Clipperton Fracture Zone	28 March 2016
Government of the Republic of Korea	27 April 2001		Clarion-Clipperton Fracture Zone	26 April 2016
China Ocean Mineral Resources Research and Development Association	22 May 2001	China	Clarion-Clipperton Fracture Zone	21 May 2016
Deep Ocean Resources Development Co. Ltd.	20 June 2001	Japan	Clarion-Clipperton Fracture Zone	19 June 2016
Institut français de recherche pour l'exploitation de la mer	20 June 2001	France	Clarion-Clipperton Fracture Zone	19 June 2016
Government of India	25 March 2002		Indian Ocean	24 March 2017